

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of NEW RULES I through XVIII,)	ON PROPOSED ADOPTION,
the amendment of 17.8.101,)	AMENDMENT AND REPEAL
17.8.110, 17.8.309, 17.8.310,)	
17.8.316, 17.8.342, 17.8.818,)	
17.8.825, 17.8.826, 17.8.901,)	(AIR QUALITY)
17.8.904, 17.8.905, 17.8.906,)	
17.8.1004, 17.8.1005,)	
17.8.1106, 17.8.1109,)	
17.8.1201, 17.8.1204,)	
17.8.1205, 17.8.1220,)	
17.8.1224, and 17.8.1226, and)	
the repeal of 17.8.701,)	
17.8.702, 17.8.704 through)	
17.8.707, 17.8.710, 17.8.715)	
through 17.8.717, 17.8.720,)	
and 17.8.730 through 17.8.734)	
pertaining to the issuance of)	
Montana air quality permits)	

TO: All Concerned Persons

1. The Board of Environmental Review previously published a notice of proposed rulemaking in this matter on February 14, 2002 at page 276, 2002 Montana Administrative Register. The Board is reinitiating rulemaking to incorporate suggested revisions received during the prior public comment period. On October 10, 2002, at 10:30 a.m., a public hearing will be held in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption, amendment and repeal of the above-stated rules pertaining to the issuance of Montana air quality permits.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 30, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email "ber@state.mt.us."

3. The proposed new rules provide as follows:

RULE I PURPOSE OF AIR QUALITY PERMITTING (1) This subchapter shall protect public health and the environment by:

(a) clearly identifying regulated air pollution sources and activities;

(b) providing a predictable process whereby air pollution sources can commence construction and operation; and

(c) assuring all applicable state and federal air quality regulations are met.

(2) This program shall be administered so as to provide efficient allocation of resources for the benefit of all parties.

RULE II DEFINITIONS For the purposes of this subchapter:

(1) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under 42 U.S.C. 7410, et seq. or 75-2-101, et seq., MCA, that would be emitted from any proposed emitting unit or modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such emitting unit or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event may application of BACT result in emission of any regulated air pollutant that would exceed the emissions allowed by any applicable standard under ARM Title 17, chapter 8, subchapter 3, and this subchapter. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of emitting units would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means that achieve equivalent results.

(2) "Construct" or "construction" includes a reasonable period of time for startup and shakedown and means:

(a) initiation of on-site fabrication, erection, or installation of an emitting unit or control equipment including, but not limited to:

(i) installation of building supports or foundations;

(ii) laying of underground pipework; or

(iii) construction of storage structures; or

(b) the installation of any portable or temporary equipment or facilities.

(3) "Day" means calendar day unless otherwise stated.

(4) "Emitting unit" means:

(a) any equipment that emits or has the potential to emit any regulated air pollutant under the Clean Air Act of Montana through a stack(s) or vent(s); or

(b) any equipment from which emissions consist solely of fugitive emissions of a regulated air pollutant under the Clean Air Act of Montana.

(5) "Existing emitting unit" means an emitting unit that was in existence and operating or was capable of being operated on March 16, 1979, or for which the department had issued a permit by that date.

(6) "Facility" means any real or personal property that is either stationary or portable and is located on one or more contiguous or adjacent properties under the control of the same owner or operator that contributes or would contribute to air pollution, including associated control equipment that affects or would affect the nature, character, composition, amount, or environmental impacts of air pollution and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

(7) "Install" or "installation" means to set into position and connect or adjust for use.

(8) "Modify" does not include routine maintenance, repair, or replacement but means:

(a) construction or changes in operation at a facility or emitting unit for which the department has issued a Montana air quality permit under this chapter, except when a permit is not required under [NEW RULE IV];

(b) construction or changes in operation at a facility or emitting unit for which a Montana air quality permit has not been issued under this chapter but that subjects the facility or emitting unit to the requirements of [NEW RULE II];

(c) construction or changes in operation at a facility or emitting unit that would violate any condition in the facility's Montana air quality permit, any board or court order, any control plan within the Montana state implementation plan, or any rule in this chapter, except as provided in [NEW RULE IV];

(d) construction or changes in operation at a facility or emitting unit that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(e) construction or changes in operation at a facility or emitting unit that would affect the plume rise or dispersion characteristics of emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804; or

(f) any change in operation that affects emissions and that was not previously permitted, except that a

change in operation that does not result in an increase in emissions because of the change is not a modification.

(9) "Montana air quality permit" means a preconstruction permit issued under this subchapter that may include requirements for the construction and subsequent operation of an emitting unit(s) or facility.

(10) "Negligible risk to the public health, safety, and welfare and to the environment" means an increase in excess lifetime cancer risk of less than 1.0×10^{-6} , for any individual pollutant, and 1.0×10^{-5} , for the aggregate of all pollutants, and an increase in the sum of the non-cancer hazard quotients for all pollutants with similar toxic effects of less than 1.0, as determined by a human health risk assessment conducted according to [NEW RULE XVII]. The department shall also consider environmental impacts identified in any environmental analysis conducted pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA, in determining compliance with all applicable rules or other requirements requiring protection of public health, safety, and welfare and the environment.

(11) "New or modified emitting unit" means an emitting unit that was not constructed or upon which construction was not commenced prior to March 16, 1979.

(12) "Owner or operator" means the owner of a facility or other person designated by the owner as responsible for overall operation of the facility.

(13) "Potential to emit" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(14) "Routine maintenance, repair, or replacement" means any action taken upon an emitting unit by the owner or operator that is necessary on a periodic basis to assure proper operation of the emitting unit. The term routine does not include activities that:

(a) have associated fixed capital costs in excess of 50% of the fixed capital cost necessary to construct a comparable, entirely new emitting unit;

(b) change the design of the emitting unit, including associated control equipment; or

(c) increase the potential to emit of the emitting unit.

(15) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a facility or emitting unit, but do not come from the facility or emitting unit itself. Secondary emissions

must be specific, well defined, quantifiable, and impact the same general area as the facility or emitting unit which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) emissions from trains coming to or from the facility or emitting unit;

(b) emissions from any off-site support facility that otherwise would not be constructed or increase its emissions as a result of the construction or operation of the facility or emitting unit.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, 75-2-215, MCA

RULE III MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in [NEW RULE III and IV], a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) a new facility or emitting unit with the potential to emit airborne lead in an amount greater than five tons per year or a modification to an existing facility or emitting unit that results in an increase in the facility or emitting unit's potential to emit airborne lead by an amount greater than 0.6 tons per year;

(b) asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter;

(c) any incinerator, as defined in 75-2-103(11), MCA, and that is subject to the requirements of 75-2-215, MCA;

(d) any facility or emitting unit upon which construction commenced, or that was installed, before November 23, 1968, when that facility or emitting unit is modified after that date and the modification increases the potential to emit by more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter; or

(e) any other facility or emitting unit upon which construction was commenced, or that was installed, after November 23, 1968, that is not specifically excluded under [NEW RULE III], and that has the potential to emit more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter.

(2) An owner or operator who has submitted an application and received a completeness determination from the department pursuant to [NEW RULE XI] may, prior to receiving a Montana air quality permit, initiate the following seasonal construction activities that, when completed, would have no anticipated increases in emissions of regulated air pollutants associated with them:

(a) installing concrete foundation work;

(b) installing below-ground plumbing;
(c) installing ductwork; or
(d) other infrastructure and/or excavation work involving the same.

(3) Notwithstanding the ability to undertake the construction activities described above, the department may issue a letter instructing the owner or operator to immediately cease such activities pending a final determination on an application if it finds that the proposed project would result in a violation of the state implementation plan or would interfere with the attainment or maintenance of any federal or state ambient air quality standard.

(4) Nothing in (2) of this rule obligates the department to issue a Montana air quality permit. An owner or operator who has received a completeness determination and who elects to engage in initial construction activities accepts the regulatory risks of engaging in such activities. The owner or operator acknowledges that the department may subsequently order cessation of initial construction activities, ultimately decline to issue a Montana air quality permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance. In voluntarily choosing to engage in such activities while knowing of these risks, the owner or operator agrees that, in the event the department seeks injunctive relief to halt or prohibit construction, no irreparable harm has resulted in any way to the owner or operator from these activities.

(5) The provisions of (2) do not supersede any other local, state, or federal requirements associated with the activities set forth in that subsection.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE IV MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under [NEW RULE III] for the following:

(a) residential fireplaces, barbecues, and similar devices for recreational, cooking, or heating use;

(b) mobile emitting units, including motor vehicles, trains, aircraft, and other such self-propelled vehicles;

(c) laboratory equipment used for chemical or physical analysis;

(d) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses);

(e) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power or lighting are temporarily unobtainable or unavailable;

(f) emergency equipment installed in industrial or commercial facilities for use when the usual sources of heat, power, or lighting are temporarily unobtainable or unavailable and when the loss of heat, power, or lighting causes, or is likely to cause, an adverse effect on public health or facility safety. Emergency equipment use extends only to those uses that alleviate such adverse effects on public health or facility safety. A permit is not required for emergency equipment as long as the facility was unable to reasonably predict the event that caused the emergency;

(g) any activity or equipment associated with the construction, maintenance, or use of roads except emitting units for which a permit is required under [NEW RULE II];

(h) open burning, which is regulated under ARM Title 17, chapter 8, subchapter 6, and an open burning permit may be required under that subchapter;

(i) drilling rig stationary engines and turbines that do not have the potential to emit more than 100 tons per year of any pollutant regulated under this chapter and that do not operate in any single location for more than 12 months;

(j) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7);

(k) routine maintenance, repair, or replacement of equipment and equipment used to perform routine maintenance, repair, or replacement.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE V MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES (1) A Montana air quality permit is not required under [NEW RULE III] for de minimis changes as specified below:

(a) construction or changed conditions of operation at a facility for which a Montana air quality permit has been issued that do not increase the facility's potential to emit by more than 15 tons per year of any pollutant except:

(i) any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing Montana air quality permit or any applicable rule contained in this chapter is prohibited, except as allowed in (2);

(ii) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(iii) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner

that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804;

(iv) any construction or improvement project with a potential to emit more than 15 tons per year may not be artificially split into smaller projects to avoid permitting under this subchapter; and

(v) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

(b) The owner or operator of any facility making a de minimis change pursuant to (1)(a) shall notify the department if the change would include addition of a new emissions unit, a change in control equipment, stack height, stack diameter, stack flow, stack gas temperature, source location, or fuel specifications, or would result in an increase in source capacity above its permitted operation.

(c) The following are excluded from the notice requirements of (1)(b):

(i) day-to-day fluctuations of the parameters described in (1)(b), occurring as a result of the design or permitted operations of the facility, including startup and shutdown of emission sources at the facility; and

(ii) addition, modification, or replacement of pumps, valves, flanges and similar emission sources. The department shall develop, maintain, and update a list of emission sources it believes qualify for exclusion from the notice requirements. Upon request, the department shall provide a copy of the list to interested persons.

(d) If notice is required under (1)(b), the owner or operator shall submit the following information to the department in writing at least 10 days prior to startup or use of the proposed de minimis change or as soon as reasonably practicable in the event of an unanticipated circumstance causing the de minimis change:

(i) a description of the proposed de minimis change requiring notice, including the anticipated date of the change;

(ii) sufficient information to calculate the potential emissions resulting from the proposed de minimis change; and

(iii) if applicable, an explanation of the unanticipated circumstance causing the change.

(e) The notice requirements under (1)(d) do not supersede, or otherwise change, any requirements in 40 CFR Parts 60, 61, or 63.

(2) A Montana air quality permit may be amended pursuant to [NEW RULE XV], for changes made under (1)(a)(i) that would otherwise violate an existing condition in the permit. Conditions in the permit concerning control equipment specifications, operational

procedures, or testing, monitoring, record keeping, or reporting requirements may be modified if the modification does not violate any statute, rule, or the state implementation plan. Conditions in the permit establishing emission limits, or production limits in lieu of emission limits, may be changed or added under (1)(a), if the owner or operator agrees to such changes or additions.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE VI NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS

(1) The owner or operator of a proposed new or modified facility or emitting unit that is subject to [NEW RULE III], shall, no later than 180 days before construction begins, or if construction is not required, no later than 120 days before installation, modification, or operation begins, submit an application to the department for a Montana air quality permit on an application form provided by the department. The department may, for good cause shown, waive or shorten the time required for filing the application.

(2) The department may provide pre-application consultation and non-binding, advisory opinions regarding any potential issues identified by the owner or operator that may arise regarding the permit application.

(3) A permit application submitted pursuant to this subchapter must contain certification by a responsible official of truth, accuracy, and completeness. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete. The following persons are authorized to sign an application on behalf of the owner or operator of a new or modified facility or emitting unit(s):

(a) an application submitted by a corporation or a limited liability company must be signed by an individual specified in the corporate bylaws or the limited liability company operating agreement as having the authority to bind the corporation or limited liability company in contracts, liabilities, and other company obligations;

(b) an application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) an application submitted by a municipal, state, federal or other public agency must be signed by a principal executive officer, appropriate elected official, or other duly authorized employee; and

(d) an application submitted by an individual must be signed by the individual or the individual's authorized agent.

(4) An application for a Montana air quality permit must include the following:

(a) a map and diagram showing the location of the proposed new or modified facility or emitting unit(s). The map and diagram must also include the location of each associated stack, the property involved, the height and outline of associated buildings, and the height and outline of each associated stack;

(b) a description of the proposed new or modified facility or emitting unit(s), including data on expected production capacity, raw materials to be processed, and major equipment components;

(c) a description of any control equipment to be installed;

(d) a description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air contaminants emitted, quantities and means of disposal of collected contaminants, and the air quality relationship of these factors to conditions created by existing stacks or emitting units or stacks associated with the proposed new or modified emitting unit(s);

(e) normal and maximum operating schedules;

(f) drawings, blueprints, specifications, or other information adequate to show the design and operation of process and air pollution control equipment involved;

(g) process flow diagrams showing material balances;

(h) a detailed schedule of construction or modification;

(i) a description of shakedown procedures to the extent shakedown is expected to affect emissions, and the anticipated duration of the shakedown period for each new or modified emitting unit;

(j) any other information requested by the department that is necessary for the department to review the application and determine whether the new or modified facility or emitting unit(s) will comply with applicable standards and rules;

(k) information regarding site characteristics necessary to conduct an assessment of impacts under the Montana Environmental Policy Act, 75-1-101, et seq., MCA, as required on the application form; and

(l) the appropriate air quality permit application fee required under ARM 17.8.504.

(5) An applicant is not required to submit information previously filed with the department. If an applicant does not want to submit information that has been submitted previously to the department, the applicant shall specify in the application the information previously submitted, and, wherever possible, shall specify the date upon which the information was submitted. Any information the department determines is in its possession becomes part of the application.

(6) Section 75-2-105, MCA, specifies the procedure for filing a declaratory judgment action to establish the

existence, and confidential status of, trade secret information provided in a permit application.

(7) An applicant for a permit shall notify the public of the application by legal publication in a newspaper of general circulation in the area affected by the application. The notice must be published within 10 days before, or after, submittal of the application. The form of the notice must be as provided to the applicant by the department.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE VII CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) When the department issues a Montana air quality permit, the permit must authorize the construction and operation of the facility or emitting unit subject to the conditions in the permit and to the requirements of this subchapter. The permit must contain any conditions necessary to assure compliance the Federal Clean Air Act, with the Clean Air Act of Montana and rules adopted under those acts.

(2) The permit may contain a schedule for specified permit conditions to become effective, subject to the time limits stated in [NEW RULE XIII]. The department may extend a deadline specified in the schedule, but an extension may not exceed five years.

(3) A Montana air quality permit may not be issued for a new or modified facility or emitting unit unless the applicant demonstrates that the facility or emitting unit can be expected to operate in compliance with the Clean Air Act of Montana and rules adopted under that Act, the federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in [NEW RULE XVII]), and any applicable requirement contained in the Montana state implementation plan (as incorporated by reference in [NEW RULE XVII]), and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.

(4) The department shall issue a Montana air quality permit for the following unless the department demonstrates that the emitting unit does not operate or is not expected to operate in compliance with applicable rules, standards, or other requirements:

(a) emitting units constructed or installed between November 23, 1968, and March 16, 1979; and

(b) emitting units constructed or installed before November 23, 1968, and modified between November 23, 1968, and March 16, 1979.

(5) In a Montana air quality permit, the department shall identify those conditions that are derived from state law, and are not derived from the federal Clean Air Act, 42 U.S.C. 7401, et seq., the Montana state implementation plan, or other federal air quality

requirements. Compliance with these conditions is not required by the state implementation plan, and is not necessary for attainment or maintenance of federal ambient air quality standards. These conditions must be identified in the permit as "state-only," and are not intended by the department to be enforceable under federal law.

(6) Nothing in this subchapter obligates the department to issue a Montana air quality permit. The department may subsequently order cessation of initial construction activities, decide not to issue the permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211, MCA. Service of the department's decision to deny a permit must be made as provided in the Montana Rules of Civil Procedure, except that the applicant may agree in writing to service by mail.

(8) If the department denies an application for a Montana air quality permit, it may not accept any further air quality permit application from the owner or operator for that project for which the permit was sought until:

(a) the time for requesting a hearing before the board has expired; or

(b) if a hearing before the board is requested, the board has issued a final decision in the matter; or

(c) the applicant has submitted additional information in writing that adequately addresses the reasons for denial.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE VIII EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a new or modified facility or emitting unit for which a Montana air quality permit is required by this subchapter shall install on the new or modified facility or emitting unit the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) BACT must be utilized.

(i) Existing emitting units and those emitting units constructed or installed after March 16, 1979, that were not previously subject to this subchapter become subject to this rule when any modification to the emitting unit requires a Montana air quality permit, however, only the specific emitting unit that is modified becomes subject to this rule.

(b) The lowest achievable emission rate must be met to the extent required by ARM Title 17, chapter 8,

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subchapters 9 and 10, for those emitting units subject to those subchapters.

(2) The owner or operator of a new or modified facility or emitting unit for which a permit is required by this subchapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE IX INSPECTION OF PERMIT (1) Current Montana air quality permits must be made available for department inspection at the location of the facility or emitting unit for which the permit has been issued, unless the permittee and the department mutually agree on a different location.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE X COMPLIANCE WITH OTHER REQUIREMENTS

(1) This subchapter does not relieve any owner or operator of the responsibility for complying with any applicable federal or Montana statute, rule or board or court order, except as specifically provided in this subchapter.

(2) Issuance of a Montana air quality permit does not affect the responsibility of a permittee to comply with the applicable requirements of any control strategy contained in the Montana state implementation plan.

(3) A permittee may not commence operation of a facility or emitting unit if construction, modification or installation has been completed in such a manner that the facility or emitting unit cannot operate in compliance with applicable statutes, rules, or requirements specified in the permit.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XI REVIEW OF PERMIT APPLICATIONS (1) Except for applications subject to [NEW RULE XII], when an application for a permit does not require an environmental impact statement, the application is not considered filed until the owner or operator has submitted to the department all required fees and all information and completed application forms.

(2) The department shall notify the applicant in writing within 30 days after receiving an application if an application is incomplete. The notice must list the reasons the application is considered incomplete, any additional information required, and the date by which the applicant must submit any additional required information.

If the requested additional information is not submitted by the date specified by the department in the notice, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. If the department receives additional application information, whether prior to a determination of completeness or in response to a notice of incompleteness, the 30-day application completeness review period begins again.

(3) Within 40 days after receiving a complete application for a permit, the department shall make a preliminary determination as to whether the permit should be issued, issued with conditions, or denied.

(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by [NEW RULE VI] and the applicant of the department's preliminary determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:

(a) that a complete copy of the application and the department's analysis of the application is available from the department and in the air quality control region where the emitting unit is located;

(b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within 15 days after the notice is mailed; and

(c) that unless the review period is extended pursuant to (5), a final decision must be made within 60 days after a complete application is submitted to the department as required by 75-2-211, MCA. The notice must specify the date upon which the 60-day review period expires, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the board concerning the department's final decision.

(5) The time for issuing a final decision may be extended for 30 days by written agreement of the department and the applicant. The department may grant additional 30-day extensions at the request of the applicant.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XII ADDITIONAL REVIEW OF PERMIT APPLICATIONS

(1) When an application for a Montana air quality permit requires an environmental impact statement under the Montana Environmental Policy Act, 75-1-101, et seq., MCA, the procedures for public review are those required by the Montana Environmental Policy Act and the rules

adopted by the board and department to implement the Act, ARM Title 17, chapter 4, subchapter 6, and 17.4.701 through 17.4.703.

(2) When an application for a Montana air quality permit is also an application for certification under the Major Facility Siting Act, public review is governed by the rules implementing that Act, ARM Title 17, chapter 20.

AUTH: 75-2-111, 75-2-204, 75-20-216, MCA

IMP: 75-2-204, 75-2-211, 75-20-216, MCA

RULE XIII DURATION OF PERMIT (1) A Montana air quality permit is in effect until the permit is revoked under [NEW RULE XIV], amended under [NEW RULE XV], or modified under [NEW RULE VI]. Portions of a Montana air quality permit may be revoked, amended, or modified without invalidating the remainder of the permit.

(2) A permit issued prior to construction or installation of a new or modified facility or emitting unit may provide that the permit or a portion of the permit will expire unless construction or installation is commenced within the time specified in the permit, which may not be less than one year or more than three years after the permit is issued.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XIV REVOCATION OF PERMIT (1) The department may revoke a Montana air quality permit or any portion of a permit upon written request of the permittee, or for violation of any requirement of the Clean Air Act of Montana, rules adopted under that Act, the federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in [NEW RULE XVII]), or any applicable requirement contained in the Montana state implementation plan (as incorporated by reference in [NEW RULE XVII]).

(2) The department shall notify the permittee in writing of its intent to revoke a permit or a portion of a permit. The department shall serve the notice as provided in [NEW RULE VII]. The department's decision to revoke a permit or any portion of a permit becomes final when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department revokes a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to revoke the permit. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(5) This section does not apply if the department determines that a permittee's request for the revocation of a portion of its permit is not an administrative amendment in accordance with [NEW RULE XV].

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XV ADMINISTRATIVE AMENDMENT TO PERMIT (1) The department may amend a Montana air quality permit, or any portion of a permit, for the following reasons:

(a) changes in any applicable rules adopted by the board;

(b) changes in operation that do not result in an increase in emissions. The owner or operator of a facility may not increase the facility's emissions beyond permit limits unless the increase meets the criteria in [NEW RULE V] for a de minimis change not requiring a permit, or unless the owner or operator applies for and receives another permit in accordance with [NEW RULES VI, VII, VIII, IX and X], and with all applicable requirements in ARM Title 17, chapter 8, subchapters 8, 9, and 10;

(c) administrative errors in the permit that do not affect substantive provisions of the permit.

(2) The department shall notify the permittee in writing of any proposed amendments to the permit. The department shall serve the notice as provided for in [NEW RULE VI]. The permit is deemed amended in accordance with the notice when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department amends a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to amend the permit. Filing a request for hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XVI TRANSFER OF PERMIT (1) A Montana air quality permit may be transferred from one location to another if:

(a) the department receives a complete notice of intent to transfer location, including:

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(i) written notice of intent to transfer location on forms provided by the department; and

(ii) documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include a statement that public comment will be accepted by the department for 15 days after the date of publication and that comments should be addressed to: Air Quality Permitting Section, Air and Waste Management Bureau, Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901;

(b) the permitted facility will operate in the new location for less than one year;

(c) the permitted facility can be expected to operate in compliance with:

(i) the Federal Clean Air Act, the Clean Air Act of Montana and rules adopted under those acts, including the ambient air quality standards; and

(ii) the Montana state implementation plan.

(d) the owner or operator of the permitted facility complies with ARM Title 17, chapter 8, subchapters 8, 9 and 10, as applicable.

(2) A Montana air quality permit may be transferred from one owner or operator to another if the department receives written notice of intent to transfer, including the names and authorized signatures of the transferor and the transferee.

(3) The department may not approve or conditionally approve a permit transfer if approval would result in a violation of the Clean Air Act of Montana or rules adopted under that Act, including the ambient air quality standards. If the department does not approve, conditionally approve, or deny a permit transfer within 30 days after receipt of a complete notice of intent to transfer, as described in (1)(a) or (2), the transfer is deemed approved.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XVII INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) 40 CFR Part 51, subpart I, specifying requirements for state programs for issuing Montana air quality permits;

(b) 40 CFR Part 51, Appendix M, specifying recommended test methods for state implementation plans;

(c) 40 CFR Part 52, subpart BB specifying the Montana state implementation plan for controlling air pollution in Montana;

(d) 40 CFR 52.21, specifying requirements for prevention of significant deterioration of air quality;

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(e) 40 CFR Part 60, specifying standards of performance for new stationary sources;

(f) 40 CFR Part 61, specifying emission standards for hazardous air pollutants;

(g) Tables 4-1 and 4-3 of the Department of Environmental Quality Air Quality Health Risk Assessment Procedures/Model, January 1995; and

(h) 42 USC 7412, et seq., listing hazardous air pollutants.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Air and Waste Management Bureau, Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from:

(a) the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703) 321-8547, Internet: orders@ntis.fedworld.gov;

(b) the National Center for Environmental Publications and Information, (800)490-9198;

(c) the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(d) at the libraries of each of the 10 EPA regional offices.

(4) Copies of the CFR may be obtained from the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-215, MCA

RULE XVIII ADDITIONAL REQUIREMENTS FOR INCINERATORS

(1) An applicant for a Montana air quality permit for an incineration facility subject to 75-2-215, MCA, shall submit a human health risk assessment protocol and a human health risk assessment as part of the application. The human health risk assessment must demonstrate that the ambient concentrations of pollutants resulting from emissions from the incineration facility subject to 75-2-215, MCA, constitute no more than a negligible risk to the public health, safety, and welfare and to the environment. At a minimum, the human health risk assessment must meet the following requirements:

(a) The human health risk assessment must include an emissions inventory listing potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air Pollutants List (as defined in section 112(b) of the FCAA);

(b) A characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emitting unit at the

facility must be submitted as part of the permit application;

(c) The human health risk assessment must address the impacts of all pollutants inventoried in (1)(a), except as provided in (1)(c)(i) and (ii). Pollutants may be excluded from the human health risk assessment if the department determines that exposure from inhalation is the only appropriate pathway to consider in the human health risk assessment and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second, if the incineration facility subject to 75-2-215, MCA, has a stack height of at least two meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800° F, and there is a distance of at least five meters from the stack to the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in Table 1 or Table 2.

(iii) The department shall periodically review accepted toxicity value databases to determine if the de minimis levels in (1)(c)(i) and (ii) should be updated.

(d) The human health risk assessment must address risks from all appropriate exposure pathways. For incineration facilities subject to 75-2-215, MCA, that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 4-1 or 4-2 of the department's health risk assessment procedures/model the application need address only impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk;

(e) The human health risk assessment must address the human health risk impact of all hazardous air pollutants, as described in (1)(a), from the emitting unit or units that constitutes the incineration facility subject to 75-2-215, MCA, from all other existing incineration facilities subject to 75-2-215, MCA, at the facility, and from all other new or existing emitting units solely supporting any incineration facility subject to 75-2-215, MCA, such as fugitive emissions from fuel storage.

(i) Emissions from existing emitting units that partially support the incineration facility, but that do not change the type or amount of emissions allowed under any existing permit in effect at the time of the permit application, need not be considered in the human health risk assessment.

(ii) If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit modification is required, that portion of the emissions increase attributable to the support of the incineration

facility must be considered in the human health risk assessment;

(f) The health risk assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect at the time the human health risk assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the emitting unit's potential to emit. Enforceable limits or controls may be considered. The human health risk assessment procedures used may be modified if site-specific conditions warrant use of alternative procedures to appropriately assess human health risk;

(g) As part of the application, the applicant shall submit to the department a human health risk assessment protocol detailing the human health risk assessment procedures. At a minimum, the human health risk assessment protocol must include:

(i) a description of the pollutants considered in the analysis;

(ii) methods used in compiling the emission inventory;

(iii) ambient dispersion models and modeling procedures used;

(iv) toxicity values for each pollutant;

(v) exposure pathways and assumptions;

(vi) any statistical analysis applied; and

(vii) any other information necessary for the department to review the adequacy of the human health risk assessment;

(h) A summary of the human health risk assessment protocol must be included in the permit analysis. The summary must:

(i) clearly define the scope of the risk assessment;

(ii) describe the exposure pathways used;

(iii) specify any pollutants identified in the emission inventory that were not required to be included in the human health risk assessment;

(iv) state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard; and

(v) state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated as required by the Montana Environmental Policy Act, in determining compliance with all applicable rules or other requirements requiring protection of public health, safety, and welfare and the environment;

(i) The department may impose additional requirements for the human health risk assessment, on a case-by-case basis, if the department reasonably believes that the type or amount of material being incinerated, the

proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed health risk assessment to adequately define the potential public health impact. Additional requirements for the human health risk assessment may include specific emission inventory procedures for determining emissions from the incineration facility subject to 75-2-215, MCA, use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

TABLE 1

<u>CAS #</u>	<u>CHEMICAL</u>	<u>CANCER ANNUAL ($\mu\text{g}/\text{m}^3$)</u>
75070	Acetaldehyde	4.5455e-02
79061	Acrylamide	7.6923e-05
107131	Acrylonitrile	1.4706e-03
1332214	Asbestos	5.1546e-04
71432	Benzene	1.2048e-02
92875	Benzidine	1.4925e-06
117817	Bis(2-Ethylhexyl) Phthalate (DEHP)	4.1667e-02
542881	Bis(Chloromethyl) Ether	1.6129e-06
75252	Bromoform	9.0909e-02
106990	1,3-Butadiene	3.5714e-04
56235	Carbon Tetrachloride	6.6667e-03
57749	Chlordane	2.7027e-04
67663	Chloroform	4.3478e-03
126998	Chloroprene	7.6923e-01
132649	Dibenzofurans	2.6316e-09
96128	1,2-Dibromo- 3-Chloropropane	5.0000e-05
106467	1,4-Dichlorobenzene (p)	9.0909e-03
91941	3,3-Dichlorobenzidene	2.9412e-04
111444	Dichloroethyl Ether	3.0303e-04
123911	1,4-Dioxane (1,4-Diethyleneoxide)	1.2987e-02
122667	1,2-Diphenylhydrazine	4.5455e-04
106898	Epichlorohydrin	8.3333e-02
51796	Ethyl Carbamate (Urethane)	3.4483e-04
106934	Ethylene Dibromide	4.5455e-04
107062	Ethylene Dichloride	3.8462e-03
75218	Ethylene Oxide	1.1364e-03
50000	Formaldehyde	7.6923e-03
76448	Heptachlor	7.6923e-05
118741	Hexachlorobenzene	2.1739e-04
87683	Hexachlorobutadiene	4.5455e-03
67721	Hexachloroethane	2.5000e-02
302012	Hydrazine	2.0408e-05
58899	Lindane (All Isomers)	9.0909e-05
75092	Methylene Chloride	2.1277e-01

62759	N-Nitrosodimethylamine	7.1429e-06
87865	Pentachlorophenol	2.1739e-02
1336363	Polychlorinated Biphenyls	7.1429e-05
75569	Propylene Oxide	2.7027e-02
1746016	2,3,7,8-TCDD	2.6316e-09
79345	1,1,2,2-Tetra- chloroethane	1.7241e-03
127184	Tetrachloro- ethylene (Perch)	1.6949e-02
8001352	Toxaphene	3.1250e-04
79005	1,1,2-Trichloroethane	6.2500e-03
79016	Trichloroethylene	5.0000e-02
88062	2,4,6-Tri- chlorophenol	3.2258e-02
75014	Vinyl Chloride	1.2821e-03
75354	Vinylidene Chloride	2.0000e-03
	Arsenic Compounds	2.3256e-05
	Beryllium Compounds	4.1667e-05
	Cadmium Compounds	5.5556e-05
	Chromium Compounds	8.3333e-06
	Coke Oven Emissions	1.6129e-04
	Nickel Compounds	3.8462e-04
	Polycyclic Organic Matter	
56553	Benz(a)anthracene	5.8824e-05
205992	Benzo(b)fluoranthene	5.8824e-05
207089	Benzo(k)fluoranthene	5.8824e-05
50328	Benzo(a)pyrene	5.8824e-05
53703	Dibenz(a,h)anthracene	5.8824e-05
193395	Indeno(1,2,3-cd) pyrene	5.8824e-05

TABLE 2

<u>CAS #</u>	<u>CHEMICAL</u>	NON-CANCER CHRONIC ANNUAL ($\mu\text{g}/\text{m}^3$)	NON-CANCER ACUTE ANNUAL ($\mu\text{g}/\text{m}^3$)
75070	Acetaldehyde	9.0000e-02	
107028	Acrolein	2.2000e-04	2.5000e-02
79061	Acrylamide	7.0000e-03	
79107	Acrylic Acid	1.0000e-02	
107131	Acrylonitrile	2.0000e-02	
107051	Allyl Chloride	1.0000e-02	
62533	Aniline	1.0000e-02	
71432	Benzene	7.1000e-01	
92875	Benzidine	1.0000e-01	
100447	Benzyl Chloride	1.2000e-01	5.0000e-01
117817	Bis(2-Ethylhexyl) Phthalate (DEHP)	7.0000e-01	
75150	Carbon Disulfide	7.0000e+00	
56235	Carbon Tetra- chloride	2.4000e-02	1.9000e+00

7782505	Chlorine	7.1000e-01	2.3000e-01
532274	2-Chloroaceto- phenone	3.0000e-04	
108907	Chlorobenzene	7.0000e-01	
67663	Chloroform	3.5000e-01	
126998	Chloroprene	1.0000e-02	
1319773	Cresols/Cresylic Acid	1.8000e+00	
95487	o-Cresol	1.8000e+00	
108394	m-Cresol	1.8000e+00	
106445	p-Cresol	1.8000e+00	
132649	Dibenzofurans	3.5000e-08	
96128	1,2-Dibromo-3- Chloropropane	2.0000e-03	
106467	1,4-Dichloro- benzene (p)	8.0000e+00	
542756	1,3-Dichloro- propene	2.0000e-01	
62737	Dichlorvos	5.0000e-03	
68122	Dimethyl Formamide	3.0000e-01	
123911	1,4-Dioxane (1,4-Diethyleneoxide)	4.0000e-02	2.0000e+01
106898	Epichlorohydrin	1.0000e-02	
106887	1,2-Epoxybutane	2.0000e-01	
140885	Ethyl Acrylate	4.8000e-01	
100414	Ethyl Benzene	1.0000e+01	
75003	Ethyl Chloride (Chloroethane)	1.0000e+02	
106934	Ethylene Dibromide	4.6000e-02	
107062	Ethylene Di- chloride	9.5000e-01	
75218	Ethylene Oxide	6.0000e+00	
50000	Formaldehyde	3.6000e-02	3.7000e+00
118741	Hexachlorobenzene	2.8000e-02	
77474	Hexachloro- cyclopentadiene	2.4000e-03	
822060	Hexamethylene- 1,6-Diisocyanate	1.0000e-04	
110543	Hexane	2.0000e+00	
302012	Hydrazine	2.4000e-03	
7647010	Hydrochloric Acid	2.0000e-01	3.0000e+01
7664393	Hydrogen Fluoride (HF Acid)	5.9000e-02	5.8000e+00
58899	Lindane (All Isomers)	1.0000e-02	
108316	Maleic Anhydride	2.4000e-02	1.0000e-01
67561	Methanol	6.2000e+00	
74839	Methyl Bromide (Bromomethane)	5.0000e-02	
71556	Methyl Chloroform	3.2000e+00	1.9000e+03
78933	Methyl Ethyl Ketone (2-Butanone)	1.0000e+01	
624839	Methyl Isocyanate	3.6000e-03	
80626	Methyl Metha-	9.8000e+00	

	crylate		
1634044	Methyl Tert Butyl Ether	3.0000e+01	
75092	Methylene Chloride	3.0000e+01	3.5000e+01
101688	Methylene Diphenyl Diisocyanate	2.0000e-04	
101779	4,4'-Methylene-dianiline	1.9000e-02	
91203	Naphthalene	1.4000e-01	
98953	Nitrobenzene	1.7000e-02	
79469	2-Nitropropane	2.0000e-01	
87865	Pentachlorophenol	2.0000e-03	
108952	Phenol	4.5000e-01	
75445	Phosgene	1.2000e+00	
7803512	Phosphine	3.0000e-03	
7723140	Phosphorus	7.0000e-04	
85449	Phthalic Anhydride	7.0000e+01	
1336363	Polychlorinated Biphenyls	1.2000e-02	
78875	Propylene Dichloride	4.0000e-02	
75569	Propylene Oxide	3.0000e-01	1.0000e+01
100425	Styrene	1.0000e+01	
1746016	2,3,7,8-TCDD	3.5000e-08	
127184	Tetrachloroethylene (Perch)	3.5000e-01	6.8000e+01
108883	Toluene	4.0000e+00	
584849	2,4-Toluene Diisocyanate	7.0000e-04	
79016	Trichloroethylene	6.4000e+00	
121448	Triethylamine	7.0000e-02	
108054	Vinyl Acetate	2.0000e+00	
593602	Vinyl Bromide	3.0000e-02	
75014	Vinyl Chloride	2.6000e-01	
75354	Vinylidene Chloride	3.2000e-01	
1330207	Xylenes (Isomers and Mixture)	3.0000e+00	4.4000e+01
	Antimony Compounds	2.0000e-03	
	Arsenic Compounds	5.0000e-03	
	Beryllium Compounds	4.8000e-05	
	Cadmium Compounds	3.5000e-02	
	Chromium Compounds	2.0000e-05	
	Cyanide Compounds	7.0000e-01	3.3000e+01
	Ethyl Glycol But Ether	2.0000e-01	
	Ethyl Glycol Ether	3.7000e+00	
	Ethyl Ether		
	Ethyl Gly MonoBut Ether	1.5000e+01	
	Ethyl Gly Mono-Ether	2.0000e+00	
	Ethyl Gly Ethyl	6.4000e-01	

Ether Acetate		
Ethyl Glycol	2.0000e-01	3.2000e+00
Methyl Ether		
Ethyl Gly Methyl	5.7000e-01	
Ether Acetate		
Ethyl Gly Mono-	1.6000e+01	
Ethyl Ether Acetate		
Lead Compounds	1.5000e-02	
Manganese Com-	5.0000e-04	
pounds		
Mercury Compounds	3.0000e-03	3.0000e-01
Fine Mineral	2.4000e-01	
Fibers		
Nickel Compounds	2.4000e-03	1.0000e-02
Selenium Compounds	5.0000e-03	2.0000e-02

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, 75-2-215, MCA

4. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) through (3) remain the same.

(4) "~~Air quality preconstruction~~ Montana air quality permit" means a permit issued, altered or modified pursuant to subchapters 7, 8, 9, or 10 of this chapter.

(5) through (43) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, Chapter 2, MCA

17.8.110 MALFUNCTIONS (1) through (6) remain the same.

(7)~~(a)~~ Malfunctioning process or emission control equipment may be temporarily replaced without obtaining ~~an~~ a Montana air quality ~~preconstruction~~ permit under the requirements of ARM Title 17, chapter 8, subchapter 7, if:

(a) the department has been notified of the malfunction in compliance with the requirements of (2) ~~of this rule;~~ and

(b) continued operation or non-operation of the malfunctioning equipment would:

(i) through (iv) remain the same.

~~(b)~~ (8) If construction, installation, or use of temporary replacement equipment under ~~(a)~~ (7)(a) through (b) above constitutes a major modification and subjects a major stationary source to the requirements of ARM Title 17, chapter 8, subchapters 8, 9, or 10, the source must comply with the requirements of the applicable subchapter prior to construction, installation, or use of the temporary replacement equipment.

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~~(e)~~ (9) Any source that constructs, installs, or uses temporary replacement equipment under (7)(a) ~~above~~ shall comply with the following conditions:

(i) through (iv) remain the same, but are renumbered (a) through (d).

~~(v)~~ (e) The temporary replacement equipment must be removed or rendered inoperable within 180 days after initial startup of the temporary replacement equipment, or within 30 days after startup of the repaired malfunctioning process or emission control equipment, whichever is earlier, unless the source has submitted to the department an application for a ~~preconstruction~~ Montana air quality permit for the temporary replacement equipment or the department has approved a plan for removing the temporary replacement equipment or rendering the temporary replacement equipment inoperable by a specific date.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.309 PARTICULATE MATTER, FUEL BURNING EQUIPMENT

(1) through (5)(a) remain the same.

(b) sources constructed after March 16, 1979, that have a specific particulate emission limitation contained in ~~an~~ a Montana air quality ~~preconstruction~~ permit obtained under ARM Title 17, chapter 8, subchapter 7, a court order, board order or department order, or a process-specific rule.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.310 PARTICULATE MATTER, INDUSTRIAL PROCESSES

(1) through (3)(d) remain the same.

(e) sources constructed after March 16, 1979, that have a specific particulate emission limitation contained in ~~an~~ a Montana air quality ~~preconstruction~~ permit obtained under ARM Title 17, chapter 8, subchapter 7, a court order, board order or department order, or a process-specific rule.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.316 INCINERATORS (1) through (5) remain the same.

(6) This rule does not apply to incinerators for which ~~an~~ a Montana air quality ~~preconstruction~~ permit has been issued under 75-2-215, MCA, and ~~ARM 17.8.706(5)~~ [NEW RULE XVIII].

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.342 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (1) through (5) remain the same.

(6) As further described below, and except as expressly modified by this rule, the procedural requirements of ARM Title 17, chapter 8, subchapter 7 apply to an application for a notice of MACT approval or 112(g) exemption. For purposes of this rule:

(a) all references in applicable provisions of ARM Title 17, chapter 8, subchapter 7 to "permit" or "~~Montana~~ air quality ~~preconstruction~~ permit" or "air quality permit" mean "notice of MACT approval" or "112(g) exemption," as appropriate;

(b) all references in applicable provisions of ARM Title 17, chapter 8, subchapter 7 to "new or ~~altered~~ ~~source modified facility~~" or "~~new or modified emitting unit~~" mean "major source of HAP".

(7) The following sections of ARM Title 17, chapter 8, subchapter 7 govern the application, review, and final approval or denial of a notice of MACT approval or 112(g) exemption: ~~ARM 17.8.710(1) through (3), 17.8.710(5), 17.8.710(6), 17.8.716, 17.8.717, 17.8.720, and 17.8.730~~ [NEW RULES VI, VII, IX, X, XI and XII].

(8) through (13) remain the same.

AUTH: 75-2-111, 75-2-203, 75-2-204, MCA

IMP: 75-2-203, 75-2-204, 75-2-211, MCA

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in ARM 17.8.819 through 17.8.827 have been met. A major stationary source or major modification exempted from the requirements of subchapter 7 under ~~ARM 17.8.705(1)~~ [NEW RULE IV] shall, if applicable, still be required to obtain ~~an~~ a Montana air quality ~~preconstruction~~ permit and comply with all applicable requirements of this subchapter.

(2) through (7) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.825 SOURCES IMPACTING FEDERAL CLASS I AREAS--ADDITIONAL REQUIREMENTS (1) and (2) remain the same.

(3) Federal land managers with direct responsibility for management of Class I lands may present to the department, after reviewing the department's preliminary determination required under ~~ARM 17.8.720~~, [NEW RULE XI], a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the

change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the department concurs with such demonstration, the department may not issue the permit.

(4) through (6) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.826 PUBLIC PARTICIPATION (1) The department shall notify all applicants in writing within 30 days of the date of receipt of an application as to the completeness of the application or any deficiency in the application or information submitted as provided in ~~ARM 17.8.720.~~ [NEW RULE XI]. In the event of such a deficiency, the date of receipt of the application will be the date on which the department received all required information unless the department notifies the applicant in writing within 30 days thereafter that the application is still incomplete. This, and any subsequent notice of incompleteness shall follow the same form and requirements as the original notice of incompleteness.

(2) In accordance with ~~ARM 17.8.720,~~ [NEW RULE XI], the department shall:

(a) through (9) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.901 DEFINITIONS For the purposes of this subchapter: (1) through (14)(e)(ii) remain the same.

(iii) the department has not relied on it in issuing any Montana air quality ~~preconstruction~~ permit under regulations approved pursuant to 40 CFR Part 51, subpart I (July 1, 1993 ed.), or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) through (20) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.904 WHEN ~~AIR QUALITY PRECONSTRUCTION PERMIT~~ MONTANA AIR QUALITY PERMIT REQUIRED (1) Any new major stationary source or major modification which would locate anywhere in an area designated as non-attainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, obtain from the department ~~an a~~ a Montana air quality ~~preconstruction~~ permit in accordance with subchapter 7 and all requirements contained in this subchapter if applicable. A major stationary source or major

modification exempted from the requirements of subchapter 7 under ~~ARM 17.8.705(1)~~ [NEW RULES IV and V] which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, still be required to obtain ~~an~~ a Montana air quality ~~preconstruction~~ permit and comply with the requirements of ~~ARM 17.8.706, 17.8.710, and 17.8.720~~ [NEW RULES VI, VII, X, XI and XII], and with all applicable requirements of this subchapter.

(2) Any source or modification located anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 which becomes a major stationary source or major modification for the pollutant for which the area is designated nonattainment solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation) shall obtain from the department ~~an~~ a Montana air quality ~~preconstruction~~ permit as though construction had not yet commenced on the source or modification, in accordance with subchapter 7 and all requirements of this subchapter.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.905 ADDITIONAL CONDITIONS OF AIR QUALITY PRECONSTRUCTION PERMIT MONTANA AIR QUALITY PERMIT (1) The department shall not issue ~~an~~ a Montana air quality ~~preconstruction~~ permit required under ARM 17.8.904, unless the requirements of subchapter 7 and the following additional conditions are met:

(a) through (c) remain the same.

(d) The Montana air quality ~~preconstruction~~ permit contains a condition requiring the source to submit documentation, prior to commencement of operation that the offsets required in the permit have occurred.

(e) through (3) remain the same.

(4) The issuance of ~~an~~ a Montana air quality ~~preconstruction~~ permit shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana state implementation plan and any other requirements contained in or pursuant to local, state or federal law.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.906 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) and (2) remain the same.

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(3) For an existing fuel combustion source, credit shall be based on the actual emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offsets credit based on the actual emissions for the fuels involved is not acceptable, unless the Montana air quality ~~preconstruction~~ permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department shall ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(4) through (9) remain the same.

(10) Credits for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any Montana air quality ~~preconstruction~~ permit under subchapters 7, 8, 9, and 10, or Montana has not relied on it in a demonstration of attainment or reasonable further progress.

(11) remains the same.

(12) Emission reductions otherwise required by any applicable rule, regulation, Montana air quality ~~preconstruction~~ permit condition or the FCAA are not creditable as emissions reductions for the purposes of the offset requirement in ARM 17.8.905(1)(c). Incidental emission reductions which are not otherwise required by any applicable rule, regulation, Montana air quality ~~preconstruction~~ permit or the FCAA shall be creditable as emission reductions for such purposes if such emission reduction meets the requirements of this rule.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1004 WHEN MONTANA AIR QUALITY PRECONSTRUCTION PERMIT REQUIRED (1) Any new major stationary source or major modification which would locate anywhere in an area designated as attainment or unclassified for a national ambient air quality standard under 40 CFR 81.327 and which would cause or contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall obtain from the department ~~an~~ a Montana air quality ~~preconstruction~~ permit prior to construction in accordance with subchapters 7 and 8 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 7 under ~~ARM 17.8.705(1)~~ [NEW RULE IV] which would locate anywhere in an area designated as attainment or unclassified for a national ambient air quality standard under 40 CFR 81.327 and which would cause or

contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall, prior to construction, still be required to obtain ~~an~~ a Montana air quality ~~preconstruction~~ permit and comply with the requirements of ~~ARM 17.8.706, 17.8.710, and 17.8.710,~~ [NEW RULES VI, VII, X, XI and XII], and ~~all~~ any other applicable requirements of this subchapter.

(2) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1005 ADDITIONAL CONDITIONS OF ~~AIR QUALITY~~
~~PRECONSTRUCTION~~ MONTANA AIR QUALITY PERMIT (1) The department will not issue ~~an~~ a Montana air quality ~~preconstruction~~ permit required under ARM 17.8.1004 unless the requirements of subchapters 7 and 8 and the following additional conditions are met:

(a) through (c) remain the same.

(d) the Montana air quality ~~preconstruction~~ permit contains a condition requiring the source to submit documentation, prior to commencement of operation that the offsets required in the Montana air quality permit have occurred.

(2) If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the department may, instead, prescribe a design, operational or equipment standard. In such cases, the department shall make its best estimate as to the emission rate that will be achieved, and must take such steps as are necessary to ensure that this rate is federally enforceable. Any Montana air quality ~~preconstruction~~ permit issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. As used in this subchapter, the term "emission limitation" shall also include such design, operational, or equipment standards.

(3) and (4) remain the same.

(5) The issuance of ~~an~~ a Montana air quality ~~preconstruction~~ permit does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana state implementation plan and any other requirements of local, state or federal law.

(6) remains the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1106 VISIBILITY IMPACT ANALYSIS (1) remains the same.

(2) The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to support any analysis or demonstration required by these rules pursuant to ~~ARM 17.8.706~~ [NEW RULE VI].

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-204, 75-2-211, MCA

17.8.1109 ADVERSE IMPACT AND FEDERAL LAND MANAGER

(1) Federal land managers may present to the department, after the preliminary determination required under ~~ARM 17.8.720(2)~~ [NEW RULE XI], demonstration that the emissions from the proposed source or modification may cause or contribute to adverse impact on visibility in any federal Class I area, notwithstanding that the air quality change resulting from the emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment defined in ARM 17.8.804 (PSD) for a federal Class I area.

(2) and (3) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-204, 75-2-211, MCA

17.8.1201 DEFINITIONS (1) through (8) remain the same.

(9) "~~Air quality preconstruction~~ Montana air quality permit" means a permit issued, altered, or modified pursuant to subchapters 7, 8, 9, or 10 of this chapter.

(10)(a) remains the same.

(b) any federally enforceable term, condition or other requirement of any Montana air quality ~~preconstruction~~ permit issued by the department under subchapters 7, 8, 9, and 10 of this chapter, or pursuant to regulations approved or promulgated through rulemaking under Title I of the FCAA, including parts C and D;

(c) through (33) remain the same.

AUTH: 75-2-217, MCA
IMP: 75-2-217, 75-2-218, MCA

17.8.1204 AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY (1) through (3)(b) remain the same.

(c) Federally enforceable limitations that limit a source's potential to emit may be established through conditions contained in ~~an~~ a Montana air quality ~~preconstruction~~ permit or through a judicial order or an

administrative order issued by the department or the board, that has been adopted into the Montana state implementation plan.

(d) In order to exempt a source from the requirement to obtain an air quality operating permit, the department may, at a source's request, issue ~~an~~ a Montana air quality ~~preconstruction~~ permit to establish federally enforceable permit terms, solely to limit a source's potential to emit, even if there is no associated construction at the source, the source has ~~an~~ a Montana air quality ~~preconstruction~~ permit or the source otherwise is not required to obtain a Montana air quality preconstruction permit.

(4) through (7) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, MCA

17.8.1205 REQUIREMENTS FOR TIMELY AND COMPLETE AIR QUALITY OPERATING PERMIT APPLICATIONS (1) remains the same.

(2) To be considered timely for the purposes of this rule, a source that is required to obtain a permit pursuant to this subchapter must file its application with the department as follows:

(a) One-third of all sources in existence on the date this rule is adopted by the board, or sources that have obtained Montana air quality ~~preconstruction~~ permits prior to the adoption date of this rule but commence operation after such adoption date, shall submit an air quality operating permit application no later than 1 year after the adoption date or within 30 days of the date the permit program is approved by the administrator (including partial or interim approval), whichever is later. The remainder of these sources shall submit a permit application no later than 1 year after the date the permit program is approved by the administrator (including partial or interim approval). Within 30 days after the adoption date of this rule, the department shall notify the 1/3 of the above-described sources that are required to submit applications for permits under this subchapter by the first deadline set forth above. The method used by the department to determine which of the above-described sources are included in the initial 1/3 must be fair and equitable and shall to the greatest extent practicable provide for a representative sample of air quality operating permit sources in terms of source size and type.

(b) remains the same.

(c)(~~i~~) Sources required to obtain an air quality operating permit or permit revision that are also required to obtain ~~an~~ a Montana air quality ~~preconstruction~~ permit under this chapter shall submit an application for an air quality operating permit or permit revision concurrent

with the submittal of the Montana air quality ~~preconstruction~~ permit application.

~~(ii)~~ (i) The processing of the Montana air quality ~~preconstruction~~ and operating permits will be coordinated to the greatest extent possible, but each permit will be issued according to the applicable procedures and time frames. Each application for an air quality operating permit, permit renewal, or permit revision and the associated Montana air quality ~~preconstruction~~ permit application will be processed independently of any other pending application under this chapter, including sources with pending air quality operation permit applications who submit an application for a new or altered Montana air quality ~~preconstruction~~ permit during the initial transition period. Submittal of new air quality permit applications shall not impede the issuance of any pending air quality permit application.

~~(iii)~~ (ii) During the initial transition period, sources that receive final Montana air quality ~~preconstruction~~ permits prior to their submittal of an operating permit application shall be required to address any changes to their facility in the operating permit application. The operating permit application shall be submitted per the schedule prescribed in (a) above.

(d) through (5) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

17.8.1220 AIR QUALITY OPERATING PERMIT ISSUANCE, RENEWAL, REOPENING AND MODIFICATION (1) through (4) remain the same.

(5) The department shall ensure priority is given to taking action on Montana air quality ~~preconstruction~~ permit applications for construction or modification submitted pursuant to subchapters 7, 8, 9, and 10 of this chapter.

(6) through (8) remain the same.

(9) The submittal of a complete air quality operating permit application does not affect a requirement that a source obtain ~~an~~ a Montana air quality ~~preconstruction~~ permit prior to commencement of construction under subchapters 7, 8, 9, or 10 of this chapter.

(10) through (13) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

17.8.1224 ADDITIONAL REQUIREMENTS FOR OPERATIONAL FLEXIBILITY AND AIR QUALITY OPERATING PERMIT CHANGES THAT DO NOT REQUIRE REVISIONS (1) A source holding an air quality operating permit is authorized to make changes within a permitted facility as described in (3) and (4) of this rule, providing the following conditions are met:

(a) the proposed changes do not require the source or stack to obtain ~~an~~ a Montana air quality ~~preconstruction~~ permit under subchapter 7 of this chapter;

(b) through (7)(a) remain the same.

(b) any change that increases emissions above those allowed in the Montana air quality ~~preconstruction~~ permit;

(c) through (e) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1226 ADDITIONAL REQUIREMENTS FOR MINOR AIR QUALITY OPERATING PERMIT MODIFICATIONS (1) Minor air quality operating permit modification procedures may be used only for those permit modifications that:

(a) through (d) remain the same.

(e) do not require

(f) through (5) remain the same.

(6) Unless the proposed change requires ~~an~~ a Montana air quality ~~preconstruction~~ permit, the source may make the change proposed in its minor modification application immediately after such application is filed with the department. After the source makes the proposed change, and until the department takes any of the actions specified in (5) of this rule, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions that it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions that it seeks to modify may be enforced against it.

(7) through (12) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, MCA

5. The rules proposed for repeal are as follows:

17.8.701 DEFINITIONS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA), located at page 17-421, Administrative Rules of Montana. This rule would be replaced by NEW RULE II, DEFINITIONS.

17.8.702 INCORPORATION BY REFERENCE (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-211, 75-2-215, MCA), located at page 17-424, Administrative Rules of Montana. This rule would be replaced by NEW RULE XVII, INCORPORATION BY REFERENCE.

17.8.704 GENERAL PROCEDURES FOR AIR QUALITY PRECONSTRUCTION PERMITTING (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-

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427, Administrative Rules of Montana. This rule would be replaced by NEW RULE II, MONTANA AIR QUALITY PERMITS--WHEN REQUIRED.

17.8.705 WHEN PERMIT REQUIRED--EXCLUSIONS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-429, Administrative Rules of Montana. This rule would be replaced by NEW RULE II, MONTANA AIR QUALITY PERMITS--WHEN REQUIRED; NEW RULE III, MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS; and NEW RULE IV, MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES.

17.8.706 NEW OR ALTERED SOURCES AND STACKS--PERMIT APPLICATION REQUIREMENTS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA), located at page 17-431, Administrative Rules of Montana. This rule would be replaced by NEW RULE V, NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS; and NEW RULE XVII, ADDITIONAL REQUIREMENTS FOR INCINERATORS.

17.8.707 WAIVERS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-439, Administrative Rules of Montana. This rule would be replaced by NEW RULE V, NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS.

17.8.710 CONDITIONS FOR ISSUANCE OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-441, Administrative Rules of Montana. This rule would be replaced by NEW RULE VI, CONDITIONS FOR ISSUANCE AND DENIAL OF PERMIT; and NEW RULE IX, COMPLIANCE WITH OTHER REQUIREMENTS.

17.8.715 EMISSION CONTROL REQUIREMENTS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by NEW RULE VII, EMISSION CONTROL REQUIREMENTS.

17.8.716 INSPECTION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by NEW RULE VIII, INSPECTION OF PERMIT.

17.8.717 COMPLIANCE WITH OTHER STATUTES AND RULES (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by NEW RULE IX, COMPLIANCE WITH OTHER REQUIREMENTS.

17.8.720 PUBLIC REVIEW OF PERMIT APPLICATIONS (AUTH: 75-2-111, 75-2-204, 75-20-216(3), MCA; IMP: 75-2-204, 75-2-211, 75-20-216(3), MCA), located at page 17-445,

Administrative Rules of Montana. This rule would be replaced by NEW RULE V, NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS; NEW RULE X, REVIEW OF PERMIT APPLICATIONS; and NEW RULE XI, ADDITIONAL REVIEW OF PERMIT APPLICATIONS.

17.8.730 DENIAL OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by NEW RULE VI, CONDITIONS FOR ISSUANCE AND DENIAL OF PERMIT.

17.8.731 DURATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by NEW RULE XII, DURATION OF PERMIT.

17.8.732 REVOCATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by NEW RULE XIII, REVOCATION OF PERMIT.

17.8.733 MODIFICATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-450, Administrative Rules of Montana. This rule would be replaced by NEW RULE XIV, ADMINISTRATIVE AMENDMENT TO PERMIT.

17.8.734 TRANSFER OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-451, Administrative Rules of Montana. This rule would be replaced by NEW RULE XV, TRANSFER OF PERMIT.

REASON: The Board is proposing to repeal ARM Title 17, chapter 8, subchapter 7, "Permit, Construction and Operation of Air Contaminant Sources," and adopt a new subchapter covering the same subjects. The Board is proposing to repeal the existing rules and adopt new rules because of the extent of the necessary revisions to the rules.

In the past, there has been considerable confusion among the regulated community and the public concerning the meaning of the air quality preconstruction permit rules. The proposed new rules would clarify permit requirements and are necessary to make the rules more understandable. The Department of Environmental Quality developed the proposed new rules in conjunction with a working group of representatives of the regulated community and organizations interested in air quality issues.

The subcommittee of the Clean Air Act Advisory Committee (CAAAC) drafted the preamble prior to undertaking the revision of subchapter 7, and it set the ground rules for all subsequent decisions regarding the

substantive rules. The scope and intent of the proposed rules cannot be fully understood without reference to the preamble. A precedent for including a preamble in administrative rules is ARM 17.4.601, the policy statement for the Department's rules implementing the Montana Environmental Policy Act.

New Rule II, "Definitions," would replace existing ARM 17.8.701, "Definitions," and incorporate new terms used in the proposed new rules. For clarity, the phrases "emitting unit" and "facility" would be substituted for the existing term "source." References in the current rules to "stacks" would be eliminated because the Department regulates stacks as part of the associated emitting units, so separate references to stacks are not necessary. For clarity, the definition of "construct" or "construction" would be revised to include examples of activities that are considered to constitute initiation of construction. Definitions of "lowest achievable emission rate" or "LAER" and "major emitting facility" would be deleted because the phrase "major emitting facility" no longer would be used in the rules, and the phrase "lowest achievable emission rate" or "LAER" already is defined in ARM 17.8.901(10). The new rule would add necessary definitions for the following terms and phrases used in the proposed new rules: "day"; "emitting unit"; "facility"; "install" or "installation"; "modify"; "Montana air quality permit"; "residential, institutional, or commercial"; and "routine."

New Rule III, "Montana Air Quality Permits--When Required," would replace existing ARM 17.8.704, "General Procedures For Air Quality Preconstruction Permitting," and portions of existing ARM 17.8.705, "When Permit Required--Exclusions." The new rule would specify the sources of air contaminants that are subject to the permit requirements. The new rule also would substitute a new name for the permit, "Montana air quality permit," in place of the current name, "preconstruction permit." The current name has been confusing to the regulated community, and the change is necessary to avoid the incorrect assumption that the permit applies only to construction.

The construction season in Montana is relatively short, and facilities must pour concrete and undertake other construction while weather allows. Current rules prohibit any construction without first securing a permit, and a source has to timely secure that permit in order to meet its construction deadlines. While sources should plan their permit applications accordingly, it is not unusual for issuance of a permit to be delayed beyond their control.

The proposed rule would not allow pre-permit construction if some other permit or rule prohibits the activity. For example, if a source needs a Prevention of Significant Deterioration (PSD) permit, both federal and

state regulations require that the applicant secure the permit before undertaking any construction. Nothing in this rule would supersede these existing restrictions in other rules. The applicant would be able to undertake limited pre-permit construction only if the applicant did not need a PSD permit as well. The applicant would need to submit an application and receive a completeness determination from the Department prior to undertaking the construction. In addition, the Department would have the ability to halt construction should it determine that the proposed project would result in a violation of the state implementation plan or would interfere with the attainment or maintenance of any federal or state ambient air quality standard.

New Rule IV, "Montana Air Quality Permits--General Exclusions," would replace portions of existing ARM 17.8.705, "When Permit Required--Exclusions." The new rule would specify the air contaminant sources that are excluded from the permit requirement. In the existing rules, the exclusions are combined with applicability provisions in ARM 17.8.705. Under the new rule, the following sources would be deleted from the list of excluded sources and would require a Montana air quality permit if the subchapter otherwise applies to the source: food service establishments; sources for which emissions are calculated by BTU heat input; and ventilation systems for animal housing. The Board is proposing to delete these exclusions because it believes that any operation with potential emissions above the general 25 ton per year threshold should be subject to the air quality permit requirements. Most food service establishments still would be excluded under the general 25 ton per year exclusion. New Rule III also would include a provision clarifying when emergency equipment is excluded from the permit requirement. Facilities should preplan for emergency backup and have permits for backup equipment. Predicting the future is not perfect, but it should be encouraged. Companies that do not plan for emergencies would not be absolved of responsibility for obtaining a permit. For clarity, equipment used for routine maintenance, repair, or replacement would be added to the list of exclusions.

New Rule V, "Montana Air Quality Permits--Exclusion For De Minimis Changes," would replace the portions of existing ARM 17.8.705, "When Permit Required--Exclusions," that include the exclusion from the permit requirement for de minimis changes. The exclusion now is included with other exclusions and applicability provisions in ARM 17.8.705. New Rule IV(2), along with New Rule XIV(3), would clarify that the Department may amend a permit to change or add permit conditions, related to a de minimis change, if the owner or operator agrees to the change or addition and would clarify that only the permittee may request a hearing before the Board concerning a permit

amendment that is related to a de minimis change, and that is initiated by the Department.

New Rule VI, "New Or Modified Emitting Units--Permit Application Requirements," would replace portions of existing ARM 17.8.706, "New Or Altered Sources And Stacks--Permit Application Requirements," existing ARM 17.8.707, "Waivers," and portions of existing ARM 17.8.720, "Public Review Of Permit Applications." The new rule would clarify that the Department is not obligated to issue an air quality permit upon receipt of an application, clarify the requirement that permit applications be certified for completeness and accuracy, and clarify the information that must be included in descriptions of shakedown procedures. The existing requirements for submitting "post application" information would be deleted. A new provision would advise readers of the statutory procedures for maintaining the confidentiality of trade secret information that may be included in a permit application.

New Rule VII, "Conditions For Issuance And Denial Of Permit," would replace portions of existing ARM 17.8.710, "Conditions For Issuance Of Permit," and existing ARM 17.8.730, "Denial Of Permit." The new rule would specify the conditions for issuance or denial of a permit application. Existing ARM 17.8.710(3), which prohibits operation unless the applicant demonstrates that construction has occurred in compliance with the permit, would be moved to New Rule IX. New Rule VI also would include provisions for identifying federally enforceable and state-only conditions in a permit. This is necessary because the state should have exclusive enforcement authority concerning permit conditions that are necessary only to meet state requirements, but not federal requirements. Without this specification in the permit, permit conditions become federally enforceable by virtue of the permit becoming part of the State Implementation Plan.

New Rule VIII, "Emission Control Requirements," would replace existing ARM 17.8.715, "Emission Control Requirements." The new rule would clarify that emission control requirements, including best available control technology (BACT), apply to previously unpermitted, older units that are modified in a manner requiring an air quality permit.

New Rule IX, "Inspection Of Permit," would replace existing ARM 17.8.716, "Inspection Of Permit." The new rule would add a provision specifying that the owner or operator and the Department may mutually agree on a location other than the permitted facility or emitting unit for making the air quality permit available for inspection. The present rule requires the owner or operator to maintain the permit at the location of the permitted facility. The proposed new provision could be more convenient for owners and operators of multiple facilities, such as natural gas compressor stations, that

are subject to separate permits, and would be more convenient for Department inspectors in the field who could review multiple permits issued to an owner or operator without having to travel to each permitted location.

New Rule X, "Compliance With Other Requirements," would replace portions of existing ARM 17.8.710, "Conditions For Issuance Of Permit," and existing ARM 17.8.717, "Compliance With Other Statutes And Rules." The new rule would clarify the Department's authority to prohibit operation of a facility or emitting unit if construction has occurred in a manner such that the facility cannot operate in compliance with applicable statutes, rules or permit requirements.

New Rule XI, "Review Of Permit Applications," would replace portions of existing ARM 17.8.720, "Public Review Of Permit Applications." The new rule would clarify the procedure for Department review of air quality permit applications, including clarifying that the time for Department review of a permit application does not begin until the Department receives a complete application.

New Rule XII, "Additional Review Of Permit Applications," would, without substantive change, replace portions of existing ARM 17.8.720, "Public Review Of Permit Applications."

New Rule XIII, "Duration Of Permit," would replace existing ARM 17.8.731, "Duration Of Permit." The new rule also would reflect the Department's authority under proposed New Rule XIII to revoke all, or only a portion, of a permit.

New Rule XIV, "Revocation Of Permit," would replace existing ARM 17.8.732, "Revocation Of Permit." In addition to including the existing procedures for revoking a permit, the new rule would add authority for the Department to revoke only a portion of a permit and would provide procedures for permit revocation upon the request of the owner or operator. Authority to revoke only a portion of a permit is necessary to allow an owner or operator to continue to operate part of a facility when only part of the permit is no longer necessary or valid. Adding authority for the owner or operator to request revocation is necessary to avoid the Department having to initiate revocation proceedings when the owner or operator no longer wishes to operate the facility, or part of a facility, and continue to be subject to air quality permit fees.

Subsection (5) clarifies that the department will not use this provision if a partial revocation of a permit is not an administrative amendment. If a request for a partial revocation is not an administrative amendment, it would be required to go through public review.

New Rule XV, "Administrative Amendment To Permit," would replace existing ARM 17.8.733, "Modification Of Permit." For clarity, under the new rule, the term

"amend" would be substituted for the term "modify." The new rule also would provide the Department with authority to amend a permit to correct administrative errors made in drafting the permit. This is necessary to provide the Department with authority to correct administrative errors made in permit drafting without having to wait until the permittee applies for a new permit for the facility.

New Rule XVI, "Transfer Of Permit," would replace existing ARM 17.8.734, "Transfer Of Permit." The new rule would clarify that the Department may deny transfer of a permit only upon determining that the transfer would result in violation of air quality statutes or rules. This revision is necessary to clarify that the Department does not have statutory authority to deny a permit transfer based upon non-air quality factors that the Department is required to consider under the Montana Environmental Policy Act (MEPA).

New Rule XVII, "Incorporation By Reference," would replace existing ARM 17.8.702, "Incorporation By Reference," without substantive change, except for placing the incorporations of federal regulations in numerical order, for easier reference.

New Rule XVIII, "Additional Requirements For Incinerators," would, without substantive change, replace the existing requirements in ARM 17.8.706(5), concerning air quality permits for incinerators.

The Board is proposing to amend references in other air quality rules to the preconstruction permit rules to conform those references to the proposed new rule numbers and rule terminology. The Board also is proposing minor editorial and numbering revisions to existing rules, to conform those rules to current rule drafting and numbering style. These amendments are not intended to change the meaning of the rules.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us", to be received no later than 5:00 p.m. October 17, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices

regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: _____
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State _____, 2002.